



**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

Dane Cty. Dept. of Human Services, Petitioner

vs.

██████████ Respondent

DECISION

Case #: FOF - 175663

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Pursuant to petition filed July 19, 2016, under Wis. Admin. Code §HA 3.03, and 7 C.F.R. § 273.16, to review a decision by the Dane Cty. Dept. of Human Services to disqualify ██████████ from receiving FoodShare benefits (FS) for a period of ten years, a hearing was held on Wednesday, September 7, 2016 at 01:15 PM at ██████████ Wisconsin.

The issue for determination is whether the respondent committed an Intentional Program Violation (IPV).

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

Dane Cty. Dept. of Human Services  
1819 Aberg Avenue  
Suite D

██████████, WI 53704-6343

By: ██████████

Respondent:

██████████ (Did Not Appear)

██████████

██████████

**ADMINISTRATIVE LAW JUDGE:**

Teresa A. Perez

Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The respondent (CARES # ██████████) is a resident of Illinois who received FS benefits in Dane County from December 4, 2014 through March 31, 2016.

2. On December 4, 2014, the respondent completed a telephone interview at which time she asked to reapply for Wisconsin FS, reported that she was homeless and staying with her mother, and that she had relocated to Wisconsin from Illinois on November 27, 2014. At that time, the agency expedited the issuance of her agency but informed her that she needed to provide additional verification to receive continuing benefits for January of 2015. She did not provide the requested verification.
3. The respondent called the county agency on January 2, 2015, asked to have her Wisconsin FS benefits reopened, and again reported that she was living with her mother.
4. On January 5, 2015, the county agency sent an About Your Benefits notice to the respondent. Included in that notice was a list of “client responsibilities” which indicated that the respondent was required to inform the county agency if someone in the household moved to a new address.
5. On May 26, 2015, the respondent submitted a Six Month Report Form via the on-line ACCESS tool to renew her Wisconsin FS and reported that she continued to reside in [REDACTED], Wisconsin.
6. The respondent began to receive FS in Illinois beginning in June of 2015 and continued to receive FS from Illinois through at least March of 2016.
7. On November 20, 2015, the respondent completed a renewal for Wisconsin FS via telephone and did not report any changes regarding her residency.
8. The department’s records regarding the respondent’s EBT card transaction history show that between June 2015 and March 2016, the respondent nearly exclusively used her Wisconsin EBT card to make purchases in the State of Illinois. The only dates on which the respondent used her Wisconsin EBT card to make purchases in the State of Wisconsin between June 2015 and March 2016 are: August 26, 2015, August 28, 2015, and August 31, 2015.
9. On July 26, 2016, the petitioner prepared an Administrative Disqualification Hearing Notice alleging that respondent intentionally misrepresented or withheld facts by providing inaccurate residency information to receive FS in two states simultaneously and that she did, in fact, receive FS benefits from both Wisconsin and Illinois from June of 2015 through March of 2016.
10. The respondent failed to appear for the scheduled September 7, 2016 Intentional Program Violation (IPV) hearing and did not provide any good cause for said failure to appear.

## **DISCUSSION**

An intentional program violation of the FoodShare program occurs when a recipient intentionally does the following:

1. makes a false or misleading statement, or misrepresents, conceals or withholds facts;  
or
2. commits any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any Wisconsin statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of FoodShare benefits or QUEST cards.

*FoodShare Wisconsin Handbook*, § 3.14.1; *see also* 7 C.F.R. § 273.16(c) and Wis. Stat. §§ 946.92(2).

An intentional program violation can be proven by a court order, a diversion agreement entered into with the local district attorney, a waiver of a right to a hearing, or an administrative disqualification hearing, *FoodShare Wisconsin Handbook*, § 3.14.1. The petitioner can disqualify only the individual found to have committed the intentional violation; it cannot disqualify the entire household. Although other family members cannot be disqualified, their monthly allotments will be reduced unless they agree to make restitution within 30 days of the date that the FS program mails a written demand letter. 7 C.F.R. § 273.16(b). The disqualification period varies depending on the nature of the violation and whether the individual has previously committed an intentional program violation. Of particular relevance to this case is 7 C.F.R. §273.16(b)(5) which provides: "... an individual found to have made a fraudulent statement or representation with respect to the identity or place of residence of the individual in order to receive multiple food stamp benefits simultaneously shall be ineligible to participate in the Program for a period of 10 years."

7 C.F.R. §273.16(e)(4) provides that the hearing shall proceed if the respondent cannot be located or fails to appear without good cause. The respondent did not appear or claim a good cause reason for not attending the hearing. Therefore, I must determine whether the respondent committed an IPV based solely on the evidence that the petitioner presented at hearing.

In order for the petitioner to establish that a FS recipient has committed an IPV, it has the burden to prove two separate elements by clear and convincing evidence. The recipient must have: 1) committed; and 2) intended to commit a program violation per 7 C.F.R. § 273.16(e)(6). In *Kuehn v. Kuehn*, 11 Wis.2d 15 (1959), the court held that:

Defined in terms of quantity of proof, reasonable certitude or reasonable certainty in ordinary civil cases may be attained by or be based on a mere or fair preponderance of the evidence. Such certainty need not necessarily exclude the probability that the contrary conclusion may be true. In fraud cases it has been stated the preponderance of the evidence should be clear and satisfactory to indicate or sustain a greater degree of certitude. Such degree of certitude has also been defined as being produced by clear, satisfactory, and convincing evidence. Such evidence, however, need not eliminate a reasonable doubt that the alternative or opposite conclusion may be true. ...

*Kuehn*, 11 Wis.2d at 26.

*Wisconsin Jury Instruction – Civil 205* is also instructive. It provides:

Clear, satisfactory and convincing evidence is evidence which when weighed against that opposed to it clearly has more convincing power. It is evidence which satisfies and convinces you that "yes" should be the answer because of its greater weight and clear convincing power. "Reasonable certainty" means that you are persuaded based upon a rational consideration of the evidence. Absolute certainty is not required, but a guess is not enough to meet the burden of proof. This burden of proof is known as the "middle burden." The evidence required to meet this burden of proof must be more convincing than merely the greater weight of the credible evidence but may be less than beyond a reasonable doubt.

Further, the *McCormick* treatise states that "it has been persuasively suggested that [the clear and convincing evidence standard of proof] could be more simply and intelligibly translated to the jury if they were instructed that they must be persuaded that the truth of the contention is highly probable." 2 *McCormick on Evidence* § 340 (John W. Strong gen. ed., 4<sup>th</sup> ed. 1992.)

Thus, in order to find that an IPV was committed, the trier of fact must derive from the evidence a firm conviction as to the existence of each of the two elements even though there may be a reasonable doubt as to their existence.

In order to prove the second element, i.e., intention, there must be clear and convincing evidence that the FS recipient intended to commit the IPV. The question of intent is generally one to be determined by the trier of fact.

*State v. Lossman*, 118 Wis.2d 526 (1984). There is a general rule that a person is presumed to know and intend the probable and natural consequences of his or her own voluntary words or acts. See, *John F. Jelke Co. v. Beck*, 208 Wis. 650 (1932); 31A C.J.S. Evidence §131. Intention is a subjective state of mind to be determined upon all the facts. *Lecus v. American Mut. Ins. Co. of Boston*, 81 Wis.2d 183 (1977). Thus, there must be clear and convincing evidence that the FS recipient knew that the act or omission was a violation of the FS Program but committed the violation anyway.

The respondent did not appear at the hearing to explain or rebut the petitioner's evidence. The locations where the respondent used her Wisconsin EBT card between June 2015 and March 2016; her affirmative assertion that she resided in [REDACTED] in her May 26, 2016 SMRF; her failure to report any change in address during her November 20, 2015 phone renewal; the fact that she was instructed of her obligation to report changes in address; and her application for and receipt of Illinois FS benefit during the same time period that she was receiving Wisconsin FS together constitute clear and convincing evidence that she intentionally misrepresented or withheld information regarding her residence in order to receive FS in two different states. Under these circumstances, the petitioner has met its burden to establish that respondent committed an intentional program violation and the petitioner correctly seeks to disqualify the respondent from the FS program for ten years.

### **CONCLUSIONS OF LAW**

The respondent misrepresented or withheld information regarding her actual residency to simultaneously receive benefits from Wisconsin and Illinois from June of 2015 through March of 2016.

**NOW, THEREFORE**, it is

**ORDERED**

That the petitioner's determination is sustained, and that the petitioner may make a finding that the respondent committed a first IPV of the FoodShare program and disqualify the respondent from the program for ten years, effective the first month following the date of receipt of this decision.

### **REQUEST FOR A REHEARING ON GROUNDS OF GOOD CAUSE FOR FAILURE TO APPEAR**

In instances where the good cause for failure to appear is based upon a showing of non-receipt of the hearing notice, the respondent has 30 days after the date of the written notice of the hearing decision to claim good cause for failure to appear. See 7 C.F.R. sec. 273.16(e)(4). Such a claim should be made in writing to the Division of Hearings and Appeals, P.O. Box 7875, [REDACTED] Madison, WI 53707-7875.

## APPEAL TO COURT

You may also appeal this decision to Dane County Circuit Court. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, [REDACTED], WI 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing request (if you request one).

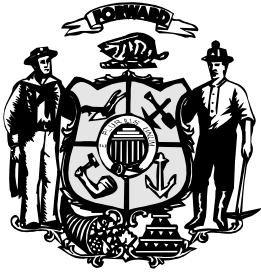
The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of [REDACTED],  
Wisconsin, this 15th day of September, 2016

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\sTeresa A. Perez  
Administrative Law Judge  
Division of Hearings and Appeals

c: Capital Consortium - email  
Public Assistance Collection Unit - email  
Division of Health Care Access and Accountability - email  
[REDACTED] - email



## State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on September 15, 2016.

Dane Cty. Dept. of Human Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability  
[REDACTED]